

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION; STATE OF  
NEW YORK; STATE OF CALIFORNIA;  
STATE OF ILLINOIS; STATE OF NORTH  
CAROLINA; STATE OF OHIO;  
COMMONWEALTH OF PENNSYLVANIA;  
and COMMONWEALTH OF VIRGINIA,

*Plaintiffs,*

v.

VYERA PHARMACEUTICALS, LLC;  
PHOENIXUS AG; MARTIN SHKRELI,  
individually, as an owner and former director of  
Phoenixus AG and a former executive of Vyera  
Pharmaceuticals, LLC; and KEVIN  
MULLEADY, individually, as an owner and  
director of Phoenixus AG and a former executive  
of Vyera Pharmaceuticals, LLC,

*Defendants.*

Case No. 20-cv-00706 (DLC)

ECF Case

**JOINT STIPULATION AND ORDER  
TO AMEND THE RELIEF REQUESTED IN THE PLEADINGS**

WHEREAS, the Federal Trade Commission (“FTC”) and State of New York initiated the above-captioned action (“Action”) on January 27, 2020, and with State of California, State of Illinois, State of North Carolina, State of Ohio, Commonwealth of Pennsylvania, and Commonwealth of Virginia (collectively, “the States,” and, together with the FTC, “Plaintiffs”) filed an Amended Complaint for Injunctive and Other Equitable Relief on April 14, 2020 (“Amended Complaint”, ECF No. 87);

WHEREAS, the Amended Complaint's Prayer for Relief seeks the following remedies under federal<sup>1</sup> and/or state law<sup>2</sup>:

- A. Declaratory relief (§§ 1-12);
- B. Injunctive relief (§§ 13-15);
- C. Equitable monetary relief (§§ 16-17);
- D. Reasonable attorneys' fees and costs for the States only (§ 18); and
- E. Civil penalties/forfeitures for the States only (§ 19);

WHEREAS, no Plaintiff seeks or will seek to recover monetary damages in this action (ECF No. 229 at 40 ("[P]laintiffs in this action do not seek damages; they seek equitable monetary relief."));

WHEREAS, in September and October 2020, Defendants Vyera Pharmaceuticals, LLC, Phoenixus AG, Martin Shkreli, and Kevin Mulleady ("Defendants") responded to the Amended Complaint with Answers containing jury demands (ECF Nos. 257, 292, 293);

WHEREAS, pursuant to Federal Rule of Civil Procedure 15(a)(2), the States wish to amend the Amended Complaint by deleting only Paragraph 19 in the Prayer for Relief containing the States' request for civil penalties/forfeitures under state law and to forgo any claim for civil penalties/forfeitures based on the alleged conduct in the Action in exchange for Defendants' agreement to withdraw their jury demands; and

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<sup>1</sup> The substantive federal claims are asserted under Sections 1 and 2 of the Sherman Act and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The FTC seeks relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

<sup>2</sup> The state law claims are asserted under New York's Donnelly Act and New York Executive Law § 63(12); California's Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*; California's Unfair Competition Act, Cal. Bus. & Prof. Code § 17200 *et seq.*; Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*; North Carolina Unfair or Deceptive Practices Act, N.C. Gen. Stat. § 75-1 *et seq.*; Ohio's Valentine Act, Ohio Rev. Code Chapter §§ 109.81 and 1331 *et seq.*; Pennsylvania Common Law Doctrine Against Restraints of Trade; and Virginia Antitrust Act, Virginia Code §§ 59.1-9.1 *et seq.* The claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law was previously dismissed by the Court. (ECF No. 229.)


WHEREAS, Defendants believe they are entitled to a jury trial on any claims for damages and civil penalties/forfeitures, but have agreed to withdraw their jury demands based on the Plaintiffs' representation that they are not requesting damages in the Action and subject to the States' withdrawal with prejudice of any claims for civil penalties/forfeitures based on the alleged conduct in the Action as set forth in Paragraph 19 in the Prayer for Relief.

NOW THEREFORE, the parties hereby stipulate and agree, subject to entry of this Stipulation by the Court, that:

1. The States withdraw with prejudice any claims for civil penalties/forfeitures as set forth in Paragraph 19 in the Prayer for Relief based on the alleged conduct in the Action.
2. Defendants withdraw their jury demands.
3. Defendants will not seek to reinstate their jury demands absent further amendments to the operative complaint in the Action that seek to add parties, claims or remedies.
4. Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Amended Complaint (ECF No. 87) is AMENDED as follows: Paragraph 19 in the Prayer for Relief is STRICKEN.
5. Pursuant to Federal Rule of Civil Procedure 15(a)(2), Defendants' Answers (ECF Nos. 257, 292, 293) are AMENDED as follows: the jury demands are STRICKEN.

DATED: March 30, 2021

So ordered.  
3.30.2021.

  
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DENISE COTE  
United States District Judge

Respectfully submitted,

/s/ Markus H. Meier

Markus H. Meier  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Tel: 202-326-3759  
mmeier@ftc.gov  
*Counsel for Plaintiff Federal Trade Commission*

/s/ Jeremy R. Kasha

Jeremy R. Kasha  
Office of the New York Attorney General  
28 Liberty Street  
New York, NY 10005  
Tel: (212) 416-8277  
jeremy.kasha@ag.ny.gov  
*Counsel for Plaintiff State of New York*

/s/ Michael D. Battaglia

Michael D. Battaglia  
Deputy Attorney General Office of the  
Attorney General of California  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102  
Tel: (415) 510-3769  
michael.battaglia@doj.ca.gov  
*Counsel for Plaintiff State of California*

/s/ Richard S. Schultz

Richard S. Schultz  
Assistant Attorney General Office of the  
Attorney General of Illinois  
100 W. Randolph Street, 11th Floor  
Chicago, IL 60601  
Tel: (312) 814-3000  
rschultz@atg.state.il.us  
*Counsel for Plaintiff State of Illinois*

/s/ Stacey Anne Mahoney

Stacey Anne Mahoney  
Sarah E. Hsu Wilbur  
Nicholas Passaro  
MORGAN, LEWIS & BOCKIUS LLP  
101 Park Avenue  
New York, NY 10178  
Tel: 212-309-6000  
stacey.mahoney@morganlewis.com  
sarah.wilbur@morganlewis.com  
nicholas.passaro@morganlewis.com

Steven A. Reed (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Tel: 215-963-5603  
steven.reed@morganlewis.com

Scott A. Stempel (*pro hac vice*)  
William S. D. Cravens (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004-2541  
Tel: 202-739-5211  
scott.stempel@morganlewis.com  
william.cravens@morganlewis.com

Noah J. Kaufman (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
One Federal Street  
Boston, MA 02129  
Tel: 617-341-7590  
noah.kaufman@morganlewis.com

*Counsel for Defendants  
Vyera Pharmaceuticals, LLC and  
Phoenixus AG*

/s/ K.D. Sturgis

K.D. Sturgis  
Special Deputy Attorney General  
North Carolina Department of Justice  
Consumer Protection Division  
114 West Edenton Street  
Raleigh, NC 27603  
Tel: (919) 716-6000  
ksturgis@ncdoj.gov  
*Counsel for Plaintiff State of North Carolina*

/s/ Elizebeth M. Maag

Elizebeth M. Maag  
Associate Assistant Attorney General Office of the  
Ohio Attorney General  
Antitrust Section  
150 E. Gay Street, 22nd Floor  
Columbus, OH 43215  
Tel: (614) 466-4328  
liz.maag@ohioattorneygeneral.gov  
*Counsel for Plaintiff State of Ohio*

/s/ Joseph S. Betsko

Joseph S. Betsko  
Senior Deputy Attorney General Pennsylvania Office  
of Attorney General Antitrust Section Strawberry  
Square, 14th Floor  
Harrisburg, PA 17120  
jbetsko@attorneygeneral.gov  
*Counsel for Plaintiff Commonwealth of Pennsylvania*

/s/ Tyler T. Henry

Tyler T. Henry  
Assistant Attorney General Office of the  
Attorney General of Virginia  
202 North Ninth Street  
Richmond, VA 23219  
thenry@oag.state.va.us  
*Counsel for Plaintiff Commonwealth of Virginia*

/s/ Kenneth R. David

Kevin J. Arquit  
Albert Shemmy Mishaan  
Kenneth R. David  
Nicholas Rendino  
Kasowitz Benson Torres LLP  
1633 Broadway  
New York, NY 10019  
Tel: (212) 506-1700  
KArquit@kasowitz.com  
AMishaan@kasowitz.com  
KDavid@kasowitz.com  
NRendino@kasowitz.com

*Counsel for Defendant Kevin Mulleady*

/s/ Christopher H. Casey

Christopher H. Casey  
Jeffery S. Pollack  
Sarah O'Laughlin Kulik  
Brett Feldman  
Andrew John Rudowitz  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103 Tel: 215 979-1000  
chcasey@duanemorris.com  
jspollack@duanemorris.com  
sckulik@duanemorris.com  
bmfeldman@duanemorris.com  
ajrudowitz@duanemorris.com

Edward Kang  
Kandis L. Kovalsky  
Kang Haggerty and Fetbroyt LLC  
123 S. Broad Street Suite 1670  
Philadelphia, PA 19109  
ekang@kanghaggerty.com  
kkovalsky@kanghaggerty.com

*Counsel for Defendant Martin Shkreli*

**SO ORDERED.**

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HON. DENISE L. COTE  
UNITED STATES DISTRICT JUDGE

Date: March \_\_, 2021